

CIVIL CASE MANAGEMENT PLAN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

Christopher Turner

No. 1:17-CV-0751 BKS/DJS

VS

**Life Insurance Company of
North America**

IT IS HEREBY ORDERED that, Pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable DANIEL J. STEWART, United States Magistrate Judge on September 19, 2017 at 10:30 AM at the United States Courthouse, at Room Number 406, Albany, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) meeting, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than **seven (7) days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

- 1) JOINDER OF PARTIES:** Any application to join any person as a party to this action shall be made on or before the 8th day of January, 2018.
- 2) AMENDMENT OF PLEADINGS:** Any application to amend the pleadings to this action shall be made on or before the 8th day of January, 2018.
- 3) DISCOVERY:** All discovery in this action shall be completed on or before the 8th day of December, 2017. **(Discovery time table is to be based on the complexity of the action)**
- 4) MOTIONS:** All motions, including discovery motions, shall be made on or before the 9th day of March, 2018. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the 16th day of April, 2018. It is anticipated that the trial will take approximately 2 days to complete. The parties request that the trial be held in Albany, N.Y. (The proposed date for the commencement of trial must be within 18 months of the filing date).

6) HAVE THE PARTIES FILED A JURY DEMAND: NO.

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

The Court has federal question subject matter jurisdiction due to the fact that plaintiff's claims arise under and are governed by ERISA. All parties have been properly served.

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

Plaintiff claims that the defendant breached the group LTD insurance policy by denying the plaintiff's claim for LTD benefits. The Defendant claims that the plaintiff no longer satisfies the disability definition set forth in the group LTD policy. The plaintiff further claims that his medical condition has not changed and is still entitled to LTD benefits.

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

Whether the plaintiff is disabled as defined by the group LTD policy and entitled to benefits.

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? IS THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

It is too early to tell.

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

Plaintiff seeks payment of back LTD benefits from the date of defendants adverse benefit determination until date which he currently estimates to be \$79,459.80, reinstatement to the group LTD policy pursuant which he would receive \$2,270.28 in monthly benefits for as long as he can satisfy the disability definition.

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a) (1) at least **seven (7) days** prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

The plaintiff will seek disclosure regarding the basis for defendant's adverse benefit determination. The defendant maintains that there should be no discovery beyond the Administrative Record.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of the discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

The plaintiff will seek paper discovery . The defendant will forward a complete copy of the claim file and group policy as part of its Initial Disclosures.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34, and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

The defendant will not seek any discovery and will forward a complete copy of the claim file and group policy as part of its Initial Disclosure.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

_____ The plaintiff will seek several depositions of employees of defendant regarding the decision to terminate the plaintiff's LTD benefits. The defendant will object to any discovery beyond the Administrative Record and will not seek depositions of the plaintiff.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the last court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

_____ The plaintiff will seek one, possibly two medical experts. The defendant will not use any experts and will maintain that this Court's review of its adverse benefit determination will be de novo and limited to the contents of the Administrative Record.

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

_____ The defendant will forward with its Initial Disclosures a complete copy of the claim file which will include a copy of its hard copy component as well as copies of claim notations

that are stored electronically.

H. Protective Orders

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

_____ Depending on the nature and scope of discovery demands served by plaintiff, defendant may seek a protective order limiting discovery.

I. Anticipated Issues Requiring Court Intervention

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

_____ The plaintiff will be seeking discovery beyond the administrative record and the defendant will maintain that there should be no discovery beyond the administrative record.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

_____ It is defendant's position that the Court's de novo review of defendant's adverse benefit determination will be done via joint motions for summary judgment.

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

_____ No

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

No _____

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

1-----2-----3-----4-----5-----6-----7-----8-----9-----10
(VERY UNLIKELY) (LIKELY)

CANNOT BE EVALUATED PRIOR TO _____ (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

_____ The defendant is willing to have this matter immediately assigned to the ADR program for the purpose of a Mediation. _____ Plaintiff is willing to submit to ADR mediation. _____

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE – Subject to Mandatory Mediation under General Order #47.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING MANDATORY MEDIATION CASE, CONFIRM THAT YOU HAVE:

- A. Reviewed General Order #47? YES
- B. Reviewed the List of Court Approved Mediators available on the NDNY website? YES
- C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program? YES
- D. Discussed the time frame needed to complete Mandatory Mediation? YES

Pursuant to Fed. R. Civ. P. 26(f) a meeting was held on 9/8/17 at Telephone + Email and was attended by: De Smedt (Date) (Place)

for plaintiff(s)

Kevin G Horvatuk for defendant(s) Life Insurance Company
of North America
(party name)
(party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the clerk no later than seven (7) days in advance of the conference date.